

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1732 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
- No. 1 - Yes Nos. 2 to 5 - No
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ANUPAMA STEEL LTD.

Versus

SAURASHTRA SHIP BREAKING INDUSTRIES

Appearance:

MR JJ YAJNIK for Petitioner
MR RJ OZA for Respondent No. 1
MR JT TRIVEDI for Respondent No. 4

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 05/03/98

ORAL JUDGEMENT

This Civil Revision application under Section 115 CPC has been filed against the order dated 10.12.1997 passed by the Civil Judge (S.D.), Bhavnagar whereby the learned judge has suspended the order dated 24.10.1997 passed below Exh. 1 issuing 'Jungam Warrant' and attachment the property stated in the application under the provisions of Order 21 Rule 54 of C.P.C. The court also ordered that movable property attached on 21.11.1997 by the Bailiff of the court from the place of judgement debtor be returned to him. The court further directed that the documents received from Prothonotary and Senior Master of the Hon'ble Bombay High Court under letter dated 29.9.1997 be returned to the said officer with a copy of the order and further a letter of request be sent

for necessary further action. The court made it clear that in absence of copy of the decree execution proceedings cannot be proceeded further.

The petitioner Anupam Steel Limited judgement creditor filed an execution application on the basis of (1) a true copy of the award dated 17.11.1994 (2) minutes of the order dated 17.11.1994 and (3) certified copy of the order of the court dated 22.4.1996 received from the Prothonotary and Senior Master, High Court of Bombay. The court issued 'Jungam Warrant' as prayed by the applicant and attachment order of the immovable property as provided under Order 21 Rule 54 of C.P.C. In pursuance of the execution of Jungam Warrant certain immovable properties have been attached and rights and interest and the rights of ship breaking plot, situated at Alang Seashore has also been attached. On this the judgement debtor Saurashtra Ship breaking Industries filed objection Exh. 13. Objections were also filed by Canara Bank as well as by Mahavir Oxygen Agencies. After hearing, the court found that prothonotary and Senior Master of the High Court has not transmitted certified or uncertified copy of the decree passed by the High Court of Bombay. It was argued that under Rule 314 of the High Court of Judicature at Bombay on the original side the application for execution is not necessary to be accompanied by a certified copy the decree. However, in view of the provisions of Section 40, the Court held that Rule 314 will not have application within the territorial jurisdiction of Gujarat High Court.

I have heard learned counsel for the respondents and perused the judgement. Section 40 reads as follows:-

"Section 40 - Transfer of decree to court in another State - Where a decree is sent for execution in another State, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that State."

Reading of the provision clearly shows that when a decree is sent for execution in another State, the decree shall be executed in the manner as may be prescribed by the Rules in force in that State.

Rule 314 of the High Court of Judicature at Bombay reads as follows:-

"In all cases the application for execution shall be accompanied by a duly certified copy of the decree or order, or by the original, or by the

Minutes of decree or order until the decree or order is drawn up.

The court or the judge in Chambers may, however, for good cause, allow execution to issue before the sealing of the decree or order."

Thus, under Bombay Rules application for execution it is not necessarily to be accompanied by certified copy of the decree or order.

The High Court of Gujarat has framed Rule contained in Civil Manual which is applicable to all the courts subordinate to the High Court in the State of Gujarat. Chapter 19 provides execution of decrees. The requirement of para 310 is that the application should be accompanied by the certified copy of the order. Para 310 reads as follows:-

"310 - If the record of the proceedings in the suit is not before the Court, it may refuse to entertain an application for execution, unless the application is accompanied by a certified copy of the decree. (See: O. XXI R. 11(3)). But if the application is made to a Court, to which a copy of the decree has sent under Rule 6 of Order XXI of the Civil Procedure Code, a fresh copy of the decree need not be produced with the application."

Thus, as per the Civil Manual applicable in the State of Gujarat an execution application is required to be accompanied by certified copy of the decree. In view of the aforesaid, I find no illegality in the impugned order. The revision application is accordingly rejected. Rule is discharged. Interim relief vacated.

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